

ESTTA Tracking number: **ESTTA615826**Filing date: **07/15/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Pasadena Roadster Club, Inc.
Granted to Date of previous extension	09/14/2014
Address	4828 Del Monte Road La Canada, CA 91011 UNITED STATES
Attorney information	KATHRYN A TYLER LAW OFFICES OF KATHRYN A TYLER 931 ALTA VISTA DR ALTADENA, CA 91001 UNITED STATES ktyler931@gmail.com Phone:6262969601

Applicant Information

Application No	85701035	Publication date	03/18/2014
Opposition Filing Date	07/15/2014	Opposition Period Ends	09/14/2014
Applicant	Dwyer, Ed 7640 Woodrow Wilson Dr Los Angeles, CA 90046 UNITED STATES		


Goods/Services Affected by Opposition

Class 035. First Use: 2002/09/01 First Use In Commerce: 2002/09/01 All goods and services in the class are opposed, namely: Club services, namely, promoting the interests of car enthusiasts
Class 041. First Use: 2002/09/01 First Use In Commerce: 2002/09/01 All goods and services in the class are opposed, namely: Arranging and conducting car shows for social entertainment purposes

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Priority by common law rights

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85750957	Application Date	10/10/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PASADENA ROADSTER CLUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2002/09/25 First Use In Commerce: 2003/10/25 Club services, namely, promoting the interests of car enthusiasts; association services, namely, promoting the interests of owners and aficionados of antique automobiles</p> <p>Class 041. First use: First Use: 2002/09/25 First Use In Commerce: 2003/10/25 Social club services, namely, arranging, organizing and hosting social events, get-togethers and parties for club members in the nature of automobile enthusiasts; arranging and conducting car shows for social entertainment purposes</p>		

Attachments	85750957#TMSN.png(bytes) NOT of OPP TTAB sn 85701035 - Copy.pdf(2960531 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kathryn A. Tyler/
Name	KATHRYN A TYLER
Date	07/15/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Serial No. 85701035

Mark: PASADENA ROADSTER CLUB

Published in the *Official Gazette* on March 18, 2014

Pasadena Roadster Club, Inc.,)	Opposition No. _____
)	
Opposer,)	
)	
vs.)	
)	
Ed Dwyer,)	
)	
Defendant.)	
_____)	

NOTICE OF OPPOSITION

Pasadena Roadster Club, Inc., an active California not-for-profit corporation organized and existing under the laws of the state of California, located and doing business at 4828 Del Monte Road, La Canada Flintridge, California 91011 ("Opposer"), believes that it will be damaged by the issuance of a registration for the standard character mark PASADENA ROADSTER CLUB, shown in U.S. Trademark Application Serial No. 85/701035 ("the '035 application") in International Classes 35 and 41 for "club services, namely, promoting the interests of car enthusiasts" in class 35 and "arranging and conducting car shows for social entertainment purposes" in class 41, and having been denied further requests for extension of time by the TTAB and Applicant Ed Dwyer ("Dwyer") and Dwyer's attorney, therefore opposes same.

As grounds for its opposition Opposer, by its counsel Law Offices of Kathryn A. Tyler, alleges as follows:

1. Opposer Pasadena Roadster Club, Inc. ("PRC" and "Opposer"), a California not-for-profit corporation, California Entity Number C2555617, was formed on August 12, 2003 to promote, educate and provide recreation to its Pasadena Roadster Club members for owners of antique, novel or roadster type cars and to participate in car shows, drives, dinners and events related thereto. Attached hereto as Exhibit A is a true and correct copy of California Secretary of State Business Entity Database record for Pasadena Roadster Club, Inc.
2. The original forming members of the PASADENA ROADSTER CLUB were Bert Tibbet, Richard Loe, Eric Loe, Mike Griffith, Allen McAlister, Gordon Murchey, and Norris Pratt.
3. The original forming members of PRC used the mark PASADENA ROADSTER CLUB ("the Mark") in U.S. commerce at least as early as September 25, 2002, for their social club and club services.
4. The original forming members of the club were also the original forming members of PRC and continued to use the mark PASADENA ROADSTER CLUB when the corporation PRC was formed, with many of them serving as Directors or Officers for PRC, in addition to being active members of the club.
5. Since at least as early as September 25, 2002, PRC through its original forming members, subsequent members, and officers and directors, has promoted and advertised its club services and social club services under the PASADENA ROADSTER CLUB mark, including but not limited to, club services, namely, promoting the interests of car enthusiasts; association services, namely, promoting the interests of owners and aficionados of antique automobiles;

social club services, namely, arranging, organizing and hosting social events, get-togethers and parties for club members in the nature of automobile enthusiasts; arranging and conducting car shows for social entertainment purposes, and have continuously rendered such services in commerce.

6. As a result of the promotion of the services offered in connection with the mark PASADENA ROADSTER CLUB, PRC has built up highly valuable goodwill in the PASADENA ROADSTER CLUB, and said goodwill has become closely and uniquely identified and associated with PRC.

7. PRC's first club members consisted of seven people, including Richard Loe, Eric Loe, Bert Tibbet, Mike Griffith, Allen McAlister, Gordon Murchey, and Norris Pratt.

8. Dwyer was not an original member, Director or Officer of the club or PRC, as he did not join the club as a member, and only as a member, until February 12, 2009.

9. Dwyer was a member of the PASADENA ROADSTER CLUB from February 12, 2009 until the day he resigned, July 14, 2012, which resignation was formally accepted by the club and PRC on August 1, 2012. Attached hereto as Exhibit B is a true and correct copy of the e-mail resignation of Dwyer, dated July 14, 2012, and the acceptance of his resignation by Richard Loe on behalf of PRC.

10. Dwyer was never authorized to act on behalf of PRC for any of its property or legal matters, including filing for trademark registration of the PRC mark PASADENA ROADSTER CLUB.

11. After Dwyer's resignation from the club, he decided to start a new club and also decided to use the mark PASADENA ROADSTER CLUB.

12. Upon information and belief, Dwyer knew that PRC was the rightful owner of the mark PASADENA ROADSTER CLUB and despite that fact, filed an intent to use trademark application in the USPTO on August 10, 2012 (a few weeks after his resignation from the club), for the mark PASADENA ROADSTER CLUB, U.S. Trademark serial no. 85701035.

13. At the time Dwyer filed his trademark application with the USPTO, he knew that he was not the rightful owner of the mark.

14. Dwyer proceeded to attempt to obtain registration of the Mark through making fraudulent statements and fraudulently filing specimens of use that actually were evidence of use by another, namely, the rightful owner PRC.

15. The specimens of use filed by Dwyer in the '035 application were evidence of use by PRC, not Dwyer, and the PRC specimens actually showed use of the mark by PRC and dated from at least as early as 2002, and consisted of photographs of PRC events, PRC media events such as the Pasadena Roadster Club's Reliability Run, magazine articles in nationally distributed magazines regarding club activities and events under PRC, copies of PRC's historic photographs, copies of PRC's club photographs, and other PRC materials.

16. On March 19, 2013, Dwyer filed a Declaration of Acquired Distinctiveness under Section 2(f) along with his purported evidence of use, with such use actually being that of PRC for its own services and not the services offered by Dwyer.

17. On April 3, 2013, the USPTO Examining Attorney issued an Office Action stating that Applicant's Declaration of Acquired Distinctiveness could not be accepted for an intent to use application, and the Examining Attorney then advised Dwyer to file an Allegation to Allege Use.

18. On April 26, 2013, Dwyer filed specimens of use, which actually were photographs of PRC's club displays and banners, fraudulently claiming them as his own, as part of his Allegation to Allege Use.

19. Upon information and belief, on November 26, 2013, Dwyer submitted a substitute specimen, a newsletter dated September 2013, and fraudulently claimed that such newsletters had been in use prior to the amendment to allege use filing date, namely, prior to April 26, 2013.

20. On December 17, 2013, the Examining Attorney issued another Office Action, accepting Dwyer's fraudulent assertions as true and accepted the Declaration of Acquired Distinctiveness, and graciously granted Dwyer an additional thirty (30) days to provide an acceptable substitute specimen for international class 35.

21. Upon information or belief, on or around December 17, 2013, Dwyer hired an attorney, who shortly thereafter then submitted specimens of use dated December 2013.

22. The specimens of use submitted by Dwyer's attorney did not support a first use date of 2002 because they were created by Dwyer in 2013, Dwyer was not a member of the club until 2009, such specimens of use were created after Dwyer had resigned from PRC, and the use of the Mark on such specimens was not authorized or with the knowledge of PRC.

23. At all times during the prosecution of the '035 application, Dwyer willfully and intentionally made false statements, fraudulently submitted specimens of use which were actually for another's mark and fraudulently claimed them as his own, and perpetrated a fraud upon the USPTO by intentionally misleading and providing fraudulent statements and specimens to the USPTO Examining Attorney.

24. On October 10, 2012, PRC filed a U.S. trademark application for the mark PASADENA ROADSTER CLUB, U.S. Trademark serial no. 85750957, for services in classes 35 and 41, namely, “club services, namely, promoting the interests of car enthusiasts; association services, namely, promoting the interests of owners and aficionados of antique automobiles” in class 35, and “social club services, namely, arranging, organizing and hosting social events, get-togethers and parties for club members in the nature of automobile enthusiasts; arranging and conducting car shows for social entertainment purposes” in class 41, with first use dates of September 25, 2002 and first use in commerce October 25, 2003.

25. PRC’s mark and the mark in Dwyer’s ‘035 application are identical and have the same commercial impression.

26. PRC’s mark and the mark in Dwyer’s ‘035 application are for almost identical services as described in the applications’ descriptions of services.

27. Dwyer’s ‘035 application was cited against Opposer’s ‘957 application, and Opposer’s application is currently suspended pending the potential registration of the mark in Dwyer’s ‘035 application.

28. Opposer is the senior user and rightful owner of the mark, Dwyer has intentionally filed his application in order to block registration or use by Opposer of its mark, and Opposer will be damaged by registration of Dwyer’s mark.

29. PRC is the owner of the mark PASADENA ROADSTER CLUB under common law and senior rights that accrued before any use, either authorized or unauthorized, was made by Dwyer.

30. Upon information and belief, Dwyer’s use of the mark PASADENA ROADSTER CLUB is meant to trade on the goodwill of Opposer and Opposer’s mark.

31. No license or authorization for use of the mark PASADENA ROADSTER CLUB was ever granted by PRC to Dwyer after he resigned from the club.

32. The marks are confusingly similar, cover the same or substantially similar services, and registration and use of the mark PASADENA ROADSTER CLUB by Dwyer is likely to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Dwyer's services have their origin with Opposer and/or that such services are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Dwyer of a certificate of registration for Dwyer's mark.

WHEREFORE, Opposer PRC believes that it will be damaged by registration of Dwyer's mark and respectfully requests that the Board refuse registration of the mark contained in the '035 application, that the Board refuse registration because the '035 application is Void Ab Initio due to fraud perpetrated upon the USPTO, that the Board refuse registration based on Trademark Act sections 2(a), 2(d), and for any and all common law rights upon which Opposer may rely.

Respectfully submitted,



Kathryn A. Tyler
Attorney for Opposer
PASADENA ROADSTER CLUB, INC.

LAW OFFICES OF KATHRYN A. TYLER
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Altadena, CA 91001
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EXHIBIT A



Secretary of State

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Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Friday, July 11, 2014. Please refer to **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	PASADENA ROADSTER CLUB, INC.
Entity Number:	C2555617
Date Filed:	08/12/2003
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	4828 DEL MONTE RD
Entity City, State, Zip:	LA CANADA FLINTRIDGE CA 91011
Agent for Service of Process:	RICHARD LOE
Agent Address:	4828 DEL MONTE RD
Agent City, State, Zip:	LA CANADA FLINTRIDGE CA 91011

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

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EXHIBIT B



Resignation

Saturday, July 14, 2012 2:41 PM

From: "Ed Dwyer" <eddwyer13@yahoo.com>

To: "fordydelux@yahoo.com" <fordydelux@yahoo.com>

Gentlemen

Please except my resignation from the Pasadena Roadster Club.

There is no need for me to elaborate on my decision, what is done is done.

Regards,

Ed Dwyer

Sent from my iPad

Subject: PRC Resignation

From: Richard Loe (fordydelux@yahoo.com)

To: eddwyer@yahoo.com;

Date: Wednesday, August 1, 2012 10:24 AM

Greetings Ed,

I am sorry you have decided to resign from the club. I appreciate all the help you have given, and we will miss seeing you at the meetings. You will always be welcome at the PRC.


Sincerely,
Richard Loe

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 15, 2014, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant and Applicant's attorney of record at the following addresses:

Ed Dwyer
7640 Woodrow Wilson Drive
Los Angeles, CA 90046

Alex Patel, Esq.
PATEL & ALMEIDA PC
16830 Ventura Blvd.
Suite 360
Encino, CA 91436

By: 
Kathryn A. Tyler